

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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DEBORAH STAMPFLI, an individual,
Plaintiff,

v.

SUSANVILLE SANITARY DISTRICT, a political subdivision of the State of California, STEVE J. STUMP, in his individual and official capacities, ERNIE PETERS, in his individual and official capacities, DAVID FRENCH, in his individual and official capacities, KIM ERB, in his individual and official capacities, MARTY HEATH, in his individual and official capacities, DOES I-V, inclusive, BLACK & WHITE CORPORATIONS I-V, and ABLE & BAKER COMPANIES, inclusive,

Defendants.

No. 2:20-cv-01566-WBS-DMC

MEMORANDUM AND ORDER RE:
SUSANVILLE SANITARY DISTRICT,
STEVEN J. STUMP, JOHN MURRAY,
ERNIE PETERS, DAVID FRENCH,
KIM ERB, AND MARTY HEATH'S
MOTION TO DISMISS

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Plaintiff Deborah Stampfli ("plaintiff") brought this action against the Susanville Sanitary District ("District"),

1 Steve J. Stump, John Murray, Ernie Peters, David French, Kim Erb,
2 Marty Heath, Black & White Corporations I-V, Able and Baker
3 Companies, and Does 1-5 inclusive, for breach of express
4 contract, breach of implied in fact contract, promissory
5 estoppel, deprivation of procedural due process rights,
6 deprivation of substantive due process, conspiracy to deprive
7 plaintiff of procedural and substantive due process rights,
8 interference with contractual rights, infliction of emotional
9 distress, and failure to produce public records.

10 Before the court is the Susanville Sanitary District,
11 Steve Stump, John Murray, Ernie Peters, David French, Kim Erb,
12 and Marty Heath's Motion to Dismiss plaintiff's First Amended
13 Complaint. ("Mot. to Dismiss" (Docket No. 22).)

14 I. Factual and Procedural Background

15 Plaintiff alleges that she was hired as treasurer by
16 the Susanville Sanitary District in 2005. (See First. Am. Compl.
17 ("FAC") at ¶ 61 (Docket No. 20.) At the time of her hiring,
18 plaintiff was allegedly informed that she would be a member of
19 Operating Engineers Local Union No. 3 and that she would be
20 entitled to the benefits and protections of the agreements
21 between the union and the District, including the right to
22 continued employment and termination only for good cause and
23 after the satisfaction of procedural requirements. (See id.)
24 From 2005 to 2013, plaintiff alleges she performed her assigned
25 duties and a host of additional duties typically performed by
26 supervisory personnel, and consistently received high performance
27 evaluations. (See id. at ¶ 62.)

28 By October 2013, plaintiff was performing many

management and administrative functions but, because she was a union member, she could not participate in confidential meetings of the District's Board of Directors. (See id. at ¶ 65.) Her inability to participate in these meetings was inconvenient because the board frequently had to stop meetings or delay them to obtain information possessed only by plaintiff. (See id.) Because of these difficulties, the board proposed the creation of a new management level position with the District entitled "Office Administrator" which would allow plaintiff to participate in confidential board meetings but would require her to relinquish her union membership. (See id.)

When plaintiff was offered this new position, she declined it because she did not wish to lose the job security offered by her union affiliation. (See id. at ¶ 67.) In response to her concerns, plaintiff was allegedly advised by the General Manager and the District's general counsel that although she could not remain a union member, she would not be an at-will employee and would be afforded all the job security rights and benefits available to union members. (See id. at ¶ 69.) Plaintiff states she was promised that her employment with the District would only be terminated for cause and in accordance with established Skelly procedures.¹ (See id.) Because of these alleged representations, plaintiff relinquished her position as

25 ¹ The term Skelly procedures refers to the California
Supreme Court case Skelly v. State Personnel Board, 15 Cal.3d 194
26 (1975). In Skelly, the California Supreme Court held that a
permanent public employee's property rights (i.e. their vested
right to continued employment) cannot be taken away by an
employer without first being afforded certain procedural
27 safeguards. See *id.* at 215.
28

1 treasurer and accepted the new position of Office Administrator.
2 (See id. at ¶ 70.)

3 During 2016, plaintiff performed many duties typically
4 performed by the General Manager. (See id. at ¶ 75.) By October
5 2017, the General Manager recommended to the board that plaintiff
6 be provided a 20% salary increase to account for the additional
7 duties she performed and that she receive the additional title of
8 Assistant General Manager. (See id. at ¶ 80.) During an October
9 2017 board meeting, the board stated that plaintiff's additional
10 duties would likely be temporary until such time as a new general
11 manager had obtained sufficient experience. (See id. at ¶ 82.)
12 However, the board approved the recommended change and prepared a
13 new job description which stated that the plaintiff would work in
14 conjunction with the District General Manager. (See id. at ¶
15 83.)

16 While the aforementioned events were unfolding, a
17 nearby local utility district discovered that its General Manager
18 had embezzled money from the district. (See id. at ¶ 85.) The
19 members of the District's board wished to ensure that the
20 District not be victimized in the same fashion. (See id.)
21 Plaintiff was specifically instructed to keep the board apprised
22 of any changes which might impair the security of the District's
23 financial accounting services. (See id.)

24 In March 2018, the District hired defendant Steve Stump
25 to the position of probationary General Manager, and he relied
26 heavily on plaintiff for matters pertaining to administrative
27 operations. (See id. at ¶ 87.) Following the completion of
28 Stump's probationary period, he became increasingly hesitant to

1 work in conjunction with the plaintiff. (See id. at ¶ 91.)
2 Plaintiff alleges that as part of his efforts to strip plaintiff
3 of any perceived co-equal authority she may have had with him,
4 Stump unilaterally amended plaintiff's job description to
5 eliminate the requirements that she work "in conjunction with"
6 the General Manager. (See id. at ¶ 92.)

7 In April 2019, Stump wanted plaintiff to shift funds
8 from various accounts to allow for the purchase of a portable
9 generator. (See id. at ¶¶ 94-95.) Given plaintiff's
10 instructions from several board members regarding the financial
11 affairs of the District, she requested that Stump delay this
12 purchase until after a new budget for 2020 was created or seek
13 approval from the board for the purchase. (See id.) This
14 allegedly infuriated Stump because he believed plaintiff was
15 refusing to acknowledge his authority over her. (See id.)

16 According to the FAC, Stump realized that plaintiff was
17 in control of the District's finances because certain computer
18 programs which controlled the District's finances were only on
19 the accounting department's computers. (See id. at ¶ 99.) On or
20 about January 8, 2020, Stump directed plaintiff to have these
21 computer programs placed on his personal office computer. (See
22 id.) By placing these programs on Stump's computer, it is
23 alleged, he would be able to transfer funds between accounts,
24 make payments out of accounts, adjust customer accounts, or
25 manipulate billings. (See id. at ¶ 100.) Because of the
26 instructions she had received from board members, plaintiff told
27 Stump that she wished to meet with certain board members to
28 determine whether it was necessary for such highly sensitive

1 programs to be placed on Stump's computer. (See id. at ¶ 101.)

2 Stump responded to this by telling plaintiff to "get
3 out" and informing her that she was on unpaid administrative
4 leave. (See id. at ¶ 102.) Plaintiff alleges that prior to this
5 action, Stump had never informed plaintiff that her refusal to
6 comply with his request would result in disciplinary action.

7 (See id.) On January 14, 2020, plaintiff was informed that her
8 administrative leave would be paid, but not why she was placed on
9 leave in the first place. (See id. at ¶ 104.) On March 6, 2020,
10 Stump informed plaintiff that her "at-will" employment as Office
11 Administrator/Assistant General Manager was no longer needed and
12 would end as of March 6, 2020. (See id. at ¶ 105.)

13 On March 30, 2020, plaintiff's counsel wrote to
14 defendants' counsel to demand that she be afforded all rights of
15 review and appeal of the decision to terminate her employment.

16 (See id. at ¶ 116.) On or about April 6, 2020, defendants'
17 counsel wrote to plaintiff's counsel and informed him that
18 because plaintiff was an "at-will" employee, she had no such
19 rights to appeal or review. (See id. at ¶ 117.)

20 II. Discussion

21 Federal Rule of Civil Procedure 12(b) (6) allows for
22 dismissal when the plaintiff's complaint fails to state a claim
23 upon which relief can be granted. See Fed. R. Civ. P. 12(b) (6).
24 The inquiry before the court is whether, accepting the
25 allegations in the complaint as true and drawing all reasonable
26 inferences in the plaintiff's favor, the complaint has stated "a
27 claim to relief that is plausible on its face." Bell Atl. Corp.
28 v. Twombly, 550 U.S. 544, 570 (2007). "The plausibility standard

1 is not akin to a ‘probability requirement,’ but it asks for more
2 than a sheer possibility that a defendant has acted unlawfully.”
3 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). “Threadbare
4 recitals of the elements of a cause of action, supported by mere
5 conclusory statements, do not suffice.” Id. Although legal
6 conclusions “can provide the framework of a complaint, they must
7 be supported by factual allegations.” Id. at 679.

A. Federal Claims

9 The only federal claims in the FAC are plaintiff's
10 fourth and fifth claims for violation of procedural and
11 substantive due process and her sixth claim for conspiracy in
12 connection with the termination her employment. Although it does
13 not expressly say so in the FAC, plaintiff's counsel acknowledged
14 at the hearing that these claims are asserted under 42 U.S.C. §
15 1983.

1. Procedural Due Process

17 Plaintiff contends in her fourth claim that she had a
18 constitutionally protected property interest in continued
19 employment which was violated when she was terminated and denied
20 the pre-and post-termination procedures duly enacted and adopted
21 by the District. (See FAC at ¶¶ 160-64.)

a. Claims Against Individual Board Members and General Manager

24 To prevail on her claim that her termination
25 constituted a denial of property without due process of law,
26 plaintiff must first demonstrate that she had a protected
27 interest in continued employment. Dorr v. Butte County, 795 F.2d
28 875, 876 (9th Cir. 1986). State law defines what is and what is

1 not property. Id. Under California law, a permanent employee,
2 dismissible only for cause, has a property interest in his
3 continued employment which is protected by due process. See
4 Skelly, 15 Cal.3d at 207-08 (internal quotations omitted).
5 However, plaintiff seems to acknowledge that her position had
6 been converted to a position terminable at will. (See FAC at ¶
7 84.) It is therefore not clear from the FAC that plaintiff had a
8 property interest in continued employment that was violated when
9 she was terminated.

10 Moreover, looking to the alleged conduct of the
11 individual board members and General Manager Stump, plaintiff
12 alleges that they violated her procedural due process rights when
13 they terminated her without cause and without following pre-and
14 post-termination procedures duly enacted and adopted by the
15 District. (See FAC at ¶ 6.) She alleges in conclusory terms
16 that all the board members had a duty to intervene and protect
17 her from unconstitutional acts, but that they refused to do so.
18 (See id. at ¶ 170.) However, outside of the law enforcement
19 context, neither plaintiff, defendants, nor this court have found
20 any California, the Ninth Circuit, or in Supreme Court precedent
21 supporting such a duty to intercede. (See Pl.'s Opp'n to Mot. to
22 Dismiss at 61.); Defs.' Reply in Supp. of Mot. to Dismiss at 26
23 (Docket No. 29).)

24 Plaintiff's FAC does not even seem to clearly allege
25 facts that identify who was responsible for her termination.
26 Plaintiff first states that it was the board who voted to
27 terminate her without just cause. (See FAC at ¶ 6.) She then
28 goes on to state that it was actually General Manager Stump who

placed her on unpaid administrative leave and ultimately fired her. (See FAC at ¶¶ 102-106.) The FAC does not even specify a vote by the board. To the contrary, the FAC actually alleges that there were instances where Stump acted unilaterally and without board approval. (See FAC at ¶¶ 92-93.) In short, plaintiff does not sufficiently allege who caused the injuries of which she complains. Accordingly, plaintiff's procedural due process claims against the individual defendants will be dismissed.

b. Claim Against the District

Because 42 U.S.C. § 1983 does not provide for vicarious liability, local governments "may not be sued under § 1983 for an injury inflicted solely by its employees or agents." Monell v. Department of Social Services of the City of New York, 436 U.S. 658, 694 (1978). "Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may be fairly said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." Id.

To survive a motion to dismiss, a plaintiff must do more than simply allege that a Monell defendant "maintained or permitted an official policy, custom, or practice of knowingly permitting the occurrence of the type of wrongs" alleged in the complaint. See AE ex. rel. Hernandez v. County of Tulare, 666 F.3d 631, 637 (9th Cir. 2012). Facts regarding the specific nature of the alleged policy, custom, or practice are required; merely stating the subject to which the policy relates (e.g., excessive force) is insufficient. See *id.*

1 To establish Monell liability based upon governmental
2 policy custom, plaintiffs must show that (1) they were deprived
3 of a constitutional right, (2) the municipality had a policy; (3)
4 the policy amounted to a deliberate indifference to their
5 constitutional right; and (4) the policy was the "moving force
6 behind the constitutional violation." See Mabe v. San Bernardino
7 County, 237 F.3d 1101, 1110-11 (9th Cir. 2001) (citing Van Ort v.
8 Estate of Stanewich, 93 F.3d 831, 835 (9th Cir. 1996)).

9 For an unwritten policy or custom to form the basis of
10 a Monell claim, it must be so "persistent and widespread" that it
11 constitutes a "permanent and well settled" practice. See Monell,
12 436 U.S. at 691. In pleading such a claim, the complaint must
13 "put forth additional facts regarding the specific nature of
14 [the] alleged policy, custom, or practice." See AE ex. rel.
15 Hernandez, 666 F.3d at 637. "Liability for improper custom may
16 not be predicated on isolated or sporadic incidents; it must be
17 founded upon practices of sufficient duration, frequency and
18 consistency that the conduct has become a traditional method of
19 carrying out policy." See Trevino v. Gates, 99 F.3d 911, 918
20 (9th Cir. 1996).

21 Here, the thrust of the allegations against the
22 District is that it "adopted a de facto and unconstitutional
23 policy by failing to enforce its own adopted policies and
24 procedures when it was clearly obvious that said policies were
25 being ignored by its management employees." (See FAC at ¶ 173.)
26 However, plaintiff has not alleged facts to support that this
27 "unconstitutional custom or policy" was anything more than an
28 isolated or sporadic incident. Indeed, she contends that she is

1 the only employee to have been terminated without cause and
2 without complying with the mandates created by Resolution 04.06
3 and Skelly. (See id. at ¶ 63.) Liability for improper custom or
4 policy must be predicated on practices of sufficient duration,
5 frequency and consistency such that the conduct has become a
6 traditional method of carrying out policy. See Trevino, 99 F.3d
7 at 918.

8 Plaintiff's allegations are therefore insufficient to
9 state a plausible, not merely possible, claim for relief based
10 upon procedural due process violations against the District. See
11 AE ex rel. Hernandez, 666 F.3d at 637.

12 2. Substantive Due Process

13 "The substantive component of the Due Process Clause
14 forbids the government from depriving a person of life, liberty,
15 or property in such a way that. . . interferes with rights
16 implicit in the concept of ordered liberty." See Engquist v.
17 Oregon Dept. of Agric., 478 F.3d 985, 996 (9th Cir. 2007). A
18 threshold requirement to a substantive or procedural due process
19 claim is the plaintiff's showing of a liberty or property
20 interest protected by the Constitution. See id. "Most courts
21 have rejected the claim that substantive due process protects the
22 right to a particular public employment position and [the Ninth
23 Circuit] has yet to decide the issue." Id. at 996-97. The Ninth
24 Circuit has recognized that "there is substantive due process
25 protection against government employer actions that foreclose
26 access to a particular profession to the same degree as
27 government regulation." Id. at 998. However, the Ninth Circuit
28 has limited substantive due process claims for a public

1 employer's violation of occupational liberty to extreme cases
2 such as a government blacklist, which when circulated or
3 otherwise publicized to prospective employers effectively
4 excludes the blacklisted individual from his occupation. See id.

5 Plaintiff's fifth claim alleges that she possessed a
6 constitutionally protected property right and/or liberty interest
7 in continued employment and that defendants have violated her
8 substantive due process right to such employment. (See FAC at ¶¶
9 176-191.) She also alleges that "the conduct of the defendants
10 has deprived [her] of all ability to obtain employment in her
11 chosen field and is shocking to the conscience." (See id. at ¶
12 180.) These conclusory allegations are insufficient to plausibly
13 allege that she had a constitutionally protected substantive due
14 process right in her continued employment at the Susanville
15 Sanitary District.

16 The Ninth Circuit has not recognized that substantive
17 due process protects the right to a particular public employment
18 position. See Engquist, 478 F.3d at 996-97. Although plaintiff
19 states that she has been "deprived of all ability to obtain
20 employment in her chosen field", (see FAC at ¶ 180), she has
21 pleaded no facts to support this bald assertion. Nor has
22 plaintiff pleaded facts that would plausibly support an inference
23 that the defendants' conduct "shocks the conscience." (See FAC
24 at ¶ 180.) Accordingly, defendants' motion to dismiss
25 plaintiff's substantive due process claim will be granted.

26
27 3. Conspiracy to Deprive Substantive and Procedural
28 Due Process Rights

1 Plaintiff's sixth claim alleges conspiracy with the
2 intent of depriving plaintiff of her constitutionally protected
3 substantive and procedural due process rights. (See FAC at ¶¶
4 192–198.) Because the court has determined that plaintiff has
5 not sufficiently alleged that she had a substantive due process
6 right under the United States Constitution to continued
7 employment at the District, there can be no conspiracy to deprive
8 plaintiff of non-existent substantive due process rights. With
9 regard to her procedural due process rights, plaintiff merely
10 alleges, without any factual specificity, that the defendants
11 "either expressly, implicitly, or tacitly, agreed, cooperated, or
12 joined in a concerted action to deprive plaintiff of her
13 Constitutionally protected property and/or liberty rights." (See
14 FAC at ¶ 193.) Such conclusory allegations do not suffice.
15 Accordingly, plaintiff's sixth cause of action for conspiracy to
16 deprive plaintiff of due process rights will be dismissed.

17 B. State Law Claims

18 Because all of plaintiff's federal claims must be
19 dismissed, in its discretion under 28 U.S.C. § 1367(c) (3), the
20 court will decline to exercise jurisdiction over plaintiff's
21 supplemental state law claims at this time. Any further amended
22 complaint filed pursuant to this Order shall be deemed to
23 supersede the first amended complaint, and if plaintiff elects to
24 file a second amended complaint which reasserts her state law
25 claims, defendants may reassert their motion to dismiss the state
26 law claims at that time.²

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² Because defendants' request for judicial notice
28 pertains solely to the state law claims, the court declines to

1 IT IS THEREFORE ORDERED that defendants' motion to
2 dismiss (Docket No. 22) be, and the same is, hereby GRANTED with
3 respect to the fourth, fifth, and sixth claims of the First
4 Amended Complaint. Plaintiff has twenty days from the date this
5 Order is signed to file an amended complaint, if she can do so
6 consistent with this Order.

7 Dated: March 11, 2021



8 WILLIAM B. SHUBB

9 UNITED STATES DISTRICT JUDGE

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28 take judicial notice at this time.